

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

JONATHAN HOLLANDER,  
Plaintiff,  
v.

No. 3:11-cv-01200-HU

**OPINION AND  
ORDER**

RAINIER SCHOOL DISTRICT,  
Defendant.

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Jonathan Hollander  
jehollander@gmail.com  
5327 SE 77th Ave.  
Portland, OR 97206  
Telephone: (503) 308-7056

Plaintiff Pro Se

Steven A. Kraemer  
sak@hartwagner.com  
Leslie A. Edenhofer  
lae@hartwagner.com  
HART WAGNER LLP  
1000 SW Broadway, Twentieth Floor  
Portland, OR 97205  
Telephone: (503) 222-4499  
Facsimile: (503) 222-2301

Attorneys for Defendant  
Rainier School District

1 HUBEL, Magistrate Judge:

2       On October 31, 2013, the Court entered an Opinion and Order,  
3 wherein it: (1) informed Plaintiff Jonathan Hollander ("Plaintiff")  
4 that he would be required to sit for a deposition that would take  
5 place in the mediation room on the ninth floor of the Hatfield  
6 Courthouse, located at 1000 Southwest Third Avenue in Portland,  
7 Oregon; (2) ordered Plaintiff to confirm to the Court and counsel,  
8 in writing, by November 12, 2013, at 12:00 p.m., whether he planned  
9 on appearing in person for his deposition; (3) ordered Plaintiff to  
10 produce, by November 12, 2013, at 12:00 p.m., all records  
11 substantiating any other expenses, economic or special damages, for  
12 which Plaintiff contends Defendant is liable for the period of  
13 January 1, 2010, through the present, and all records relating to  
14 any counseling or psychological therapy of any type sought by  
15 Plaintiff for the period of January 1, 2008, through the present;  
16 and (4) informed Plaintiff that a telephone scheduling conference  
17 was going to be held on November 13, 2013, at 1:30 p.m., to set the  
18 date of Plaintiff's deposition and a date for oral argument on  
19 Plaintiff's pending motion for summary judgment.

20       The November 12, 2013 deadline came and passed without  
21 Plaintiff confirming whether he planned on appearing in person for  
22 his deposition or producing the outstanding discovery described  
23 above.

24       At approximately 1:30 p.m. on November 13, 2013, the Court  
25 attempted to convene a telephone scheduling conference with the  
26 parties. Prior to contacting Defendant Rainier School District's  
27 ("Defendant") counsel and placing her on hold, the courtroom deputy  
28 made several unsuccessful attempts to contact Plaintiff via the

1 telephone number and email address listed for him on the District  
2 of Oregon's electronic filing system, as well as the telephone  
3 number previously provided by Defendant's counsel. The courtroom  
4 deputy's email to Plaintiff is attached as Exhibit 1.

5 As described in great detail in the October 31, 2013 Opinion  
6 and Order, (Op. & Order, Docket No. 87), which is incorporated  
7 herein by reference, this is not the first time Plaintiff has  
8 failed to appear for a hearing or comply with this Court's orders.  
9 Indeed, in the October 31, 2013 Opinion and Order, the Court  
10 explicitly warned Plaintiff that his conduct and failure to comply  
11 with court orders could result in the dismissal of his case:

12 Plaintiff has failed to appear for three hearings and  
13 been more than a little obstructive in his approach to  
14 this case over the last several months. The Court warned  
15 Plaintiff that, if he failed to attend the October 30[,  
16 2013] hearing, he should expect a show cause order  
17 requiring him to demonstrate why this case should not be  
18 dismissed. The Court has clearly set forth what  
19 Plaintiff must do to proceed with his case in this order.  
20 If he fails to do any part of what is ordered here  
21 without obtaining permission in writing from the Court at  
22 least twenty-four hours in advance, a hearing will be  
23 promptly scheduled on Defendant's motion to dismiss  
24 (Docket No. 75) and Plaintiff will be required to file  
25 his arguments against dismissal in writing seven business  
26 days before that hearing and attend that hearing. If  
27 Plaintiff's explanation for failing to follow this court  
28 order is not satisfactory, his case will be dismissed  
either with or without prejudice, whichever the facts  
support at that time.

(Op. & Order, Docket No. 87.)

23 In light of Plaintiff's failure to comply with the October 31,  
24 2013 Opinion and Order, the Court implemented lesser sanctions  
25 during the November 13, 2013 scheduling conference, namely,  
26 striking Plaintiff's pending motion (Docket No. 57) for summary  
27 judgment. *Cf. Stephens v. Nike, Inc.*, No. 3:11-cv-00736-HU, 2012

1 WL 1801832, at \*1 (D. Or. May 17, 2012 (citing *Hyde & Drath v.*  
2 *Baker*, 24 F.3d 1162, 1167 (9th Cir. 1994)). The Court also (1)  
3 discussed the feasibility of less drastic sanctions, such as  
4 striking Plaintiff's claim for damages and/or non-economic or  
5 emotional distress damages; (2) set a hearing on Defendant's  
6 pending motion (Docket No. 75) to dismiss for December 5, 2013, at  
7 1:30 p.m.; (3) set a deadline of November 22, 2013, at 4:30 p.m.,  
8 for Plaintiff to respond in writing to Defendant's motion to  
9 dismiss and also explain his continued failure to comply with the  
10 Court's orders; and (4) set a deadline of November 22, 2013, at  
11 4:30 p.m., for Defendant to supplement the record on its pending  
12 motion to dismiss.

13 Plaintiff is expected to appear for the December 5, 2013 oral  
14 argument either in person or by telephone (if by phone, he must  
15 contact the Court in writing advising of his intent and supplying  
16 a working phone number he will actually answer on December 5,  
17 2013). For further details regarding the November 13, 2013  
18 scheduling conference, the parties are advised to contact the  
19 stenographer to obtain a copy of the transcript.

20 IT IS SO ORDERED.

21 Dated this 13th day of November, 2013.

22 /s/ Dennis J. Hubel

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DENNIS J. HUBEL  
United States Magistrate Judge  
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